

**REMARKS**

Claims 39-49 and 51-58 were pending in this application. Claims 41, 50, and 52-54 have been cancelled as being directed to a non-elected invention. Claims 39, 56 and 58 have been amended and new claims 59-61 have been added. Claims 45 and 51 have been cancelled without prejudice. Accordingly, after the amendments presented herein have been entered, claims 39-44, 46-49, and 55-61 will remain pending. Support for the new claims can be found throughout the specification and claims as originally filed. Support for new claims 59-61 can be found in claims 52, 54, and 55 as originally filed. No new matter has been added.

**Rejection of Claims 39-40, 42-49, and 55-58 Under 35 USC 102(b)**

The Examiner has rejected claims 39-40, 42-49, and 55-58 Under 35 USC 102(b) as being anticipated by Shinma et al. Applicants respectfully traverse this rejection. However, in the interest of expediting prosecution, and in no way acquiescing to the validity of the Examiner's rejection, Applicants have amended the claims.

In order for a reference to anticipate a claim, each and every element of the claim must be found in a single reference. This is discussed in the Manual of Patent Examining Procedure § 2131:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”  
Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Shinma et al. fail to teach or suggest each and every element of the claimed compounds. Additionally, Shinma et al. only teach the use of the their disclosed compounds for the treatment

of viral infections and do not teach or suggest that the compounds would be effective for the treatment of bacterial infections as set forth in claim 58.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

### **Rejection of Claims 39 and 51 Under 35 USC 102(b)**

The Examiner has rejected claims 39 and 51 Under 35 USC 102(b) as being anticipated by DiPaco et al. Applicants respectfully traverse this rejection. As discussed above, the claims have been amended in order to expedite prosecution.

DiPaco et al. does not teach or suggest the compounds currently claimed. Specifically, DiPaco et al. discloses various substituted acetophenones. Some of these include an amino substituent. In order to prepare crystalline materials, some of these compounds are converted into the corresponding ammonium derivatives. DiPaco et al. does not teach or suggest that such ammonium compounds would be useful for treating bacterial infections.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

**CONCLUSION**

The Examiner is urged to contact the undersigned attorney if a telephone conference would help to expedite prosecution of this application.

Dated: March 2, 2009

Respectfully submitted,

Electronic Signature: /Jonathan M. Sparks/  
Jonathan M. Sparks, Ph.D.  
Registration No.: 53,624

EDWARDS ANGELL PALMER & DODGE  
LLP  
P.O. Box 55874  
Boston, Massachusetts 02205  
(617) 517-5543  
Attorneys/Agents For Applicant